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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 DEUTSCHE BANK NATIONAL TRUST
10 COMPANY, AS TRUSTEE FOR FIRST
11 FRANKLIN MORTGAGE LOAN TRUST
2006-FF11,

Plaintiff,

12 v.

13 LEE FAMILY PROPERTIES, LLC; LP
14 HOMEOWNERS ASSOCIATION AKA LAS
15 PALMERAS HOMEOWNERS
ASSOCIATION; and ALESSI & KOENIG,
LLC,

16 Defendants.

Case No. 2:17-cv-01513-MMD-VCF

ORDER

(Def.'s Motion to Stay – ECF No. 31)

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18 This case arises out of a homeowner association's ("HOA") foreclosure and
19 involves the notice provisions applicable to foreclosure sales under Nevada Revised
20 Statutes ("NRS") Chapter 116. Before the Court is Defendant Lee Family Properties,
21 LLC's ("Lee") Motion to Stay. (ECF No. 31.) Plaintiff Deutsche Bank National Trust
22 Company ("Deutsche Bank") has opposed (ECF No. 38), and Lee has replied (ECF No.
23 41).

24 A district court has discretionary power to stay proceedings in its own court. *Landis*
25 *v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). "A trial court may, with propriety, find it is
26 efficient for its own docket and the fairest course for the parties to enter a stay of an action
27 before it, pending resolution of independent proceedings which bear upon the case."
28 *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). In deciding

1 whether to grant a stay, courts should consider “the possible damage which may result
2 from the granting of a stay, the hardship or inequity which a party may suffer in being
3 required to go forward, and the orderly course of justice measured in terms of the
4 simplifying or complicating of issues, proof, and questions of law which could be expected
5 to result from a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005)
6 (quoting *Landis*, 299 U.S. at 268). Courts should also consider “the judicial resources that
7 would be saved by avoiding duplicative litigation.” *Pate v. DePuy Orthopaedics, Inc.*, No.
8 2:12-cv-01168-MMD-CWH, 2012 WL 3532780, at *2 (D. Nev. Aug. 14, 2012) (quoting
9 *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)).

10 The Court finds that significant judicial resources will be saved if the Court refrains
11 from issuing a decision in this case until the Nevada Supreme Court determines whether
12 NRS § 116.31168 incorporates the notice provisions of NRS § 107.090. (ECF No. 68 at
13 2 (citing Nev. S. Ct. Case No. 72931).) NRS §§ 116.31168 and 107.090 prescribe two
14 fundamentally different notice mechanisms. The first requires lenders to affirmatively
15 request notice of foreclosure sales from HOAs. The second requires HOAs to notify
16 lenders as a matter of course, regardless of whether a request was made.

17 The Ninth Circuit recently held the first mechanism facially unconstitutional
18 because it impermissibly shifts the burden to lenders in violation of their procedural due
19 process rights. *Bourne Valley Court Tr. v. Wells Fargo Bank, N.A.*, 832 F.3d 1154, 1156
20 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 2296 (2017). NRS § 107.090 seems to ameliorate
21 this burden-shifting problem by requiring the HOAs to provide notice to lenders absent
22 any request from lenders for notice; however, the Ninth Circuit has held that NRS §
23 107.090 is not incorporated in NRS § 116.31168. *Id.* at 1159. If it were, the Ninth Circuit
24 reasoned, the opt-in notice scheme would be superfluous. *Id.*

25 The question of whether NRS § 116.31168 incorporates NRS § 107.090 is now
26 pending before the Nevada Supreme Court in Case No. 72931. Moreover, that court has
27 hinted it will answer the question in the affirmative. *See Nationstar Mortg., LLC v. Saticoy*
28 *Bay LLC Series 227 Shadow Canyon*, 405 P.3d 641, 648 n.11 (Nev. 2017). If the Nevada

1 Supreme Court holds that NRS § 107.090 is incorporated, then a factual question would
2 arise in this case: did the HOA provide notice to the lender consistent with NRS §
3 107.090? As the law stands currently, it is irrelevant whether the HOA provided notice to
4 the lender—foreclosure sales conducted pursuant to Chapter 116 could not have satisfied
5 the lenders’ constitutional due process rights. *See, e.g., U.S. Bank, N.A. v. Emerald Ridge*
6 *Landscape Maint. Ass’n*, No. 2:15-cv-00117-MMD-PAL, 2017 WL 4386967, at *3 (D. Nev.
7 Sept. 29, 2017). But if NRS § 116.31168 incorporated NRS § 107.090, then some
8 foreclosure sales may have satisfied constitutional due process requirements (i.e., those
9 in which HOAs gave lenders notice consistent with NRS § 107.090). Notice is at issue in
10 this case. Deutsche Bank alleges that it did not receive notice in its Complaint (ECF No.
11 1 at 6), and Defendant LP Homeowners Association denies those allegations in its answer
12 (ECF No. 14 at 5).

13 Deutsche Bank first opposes Lee’s motion on the ground that *Bourne Valley*
14 controls while the decision before the Nevada Supreme Court is pending. (ECF No. 38 at
15 3-6.) While technically correct, a decision by the Nevada Supreme Court could render
16 *Bourne Valley* inapplicable in this case, as explained *supra*.

17 Deutsche Bank next opposes Lee’s motion because the proposed stay is allegedly
18 indefinite. (*Id.* at 6.) Lee argues that the stay is not indefinite as it is tied to resolution of
19 the certified question pending before the Nevada Supreme Court. (ECF No. 41 at 5.) The
20 Court agrees with Lee—the Nevada Supreme Court’s answer to the certified question will
21 serve as a definite endpoint to the requested stay.

22 Plaintiffs also argue that the length of the stay is unreasonable because it could
23 take a year or more for the Nevada Supreme Court to answer the certified question. (ECF
24 No. 38 at 7.) While it is difficult to predict how quickly the Nevada Supreme Court will
25 answer the certified question, it is not unreasonable to stay this case because the Nevada
26 Supreme Court’s decision could moot a decision by this Court as explained *supra*. And
27 as Lee points out, “[a] stay would prevent unnecessary briefing and the expenditures of
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1 time, attorney's fees, and resources that would be wasted in the event *Bourne Valley's*
2 interpretation is deemed incorrect by the Nevada Supreme Court." (ECF No. 41 at 4.)

3 Deutsche Bank next argues that Lee will not suffer any hardship or inequity in the
4 absence of a stay. (ECF No. 38 at 7.) The Court disagrees—both parties will suffer
5 hardship if the Court issued a decision in this case that is subsequently mooted by the
6 Nevada Supreme Court's decision.

7 Finally, Deutsche Bank argues that a stay does not promote the orderly course of
8 justice because the Nevada Supreme Court's decision only has the potential to dispose
9 of one of several claims. (ECF No. 38 at 8.) Deutsche Bank argues that the Nevada
10 Supreme Court's decision will not resolve their claims for "takings, wrongful foreclosure,
11 violation of NRS § 116.3116, and quiet title." (*Id.*) However, if the Court were to resolve
12 this case by applying *Bourne Valley*, and the Nevada Supreme Court's decision rendered
13 *Bourne Valley* inapplicable, then the Court's decision would be moot. Plaintiffs do not
14 explain how the Court could resolve this case without applying *Bourne Valley*, and in fact
15 urge the Court to apply *Bourne Valley* throughout most of their response. (*Id.* at 3-6.)

16 It is therefore ordered that Lee's Motion to Stay (ECF No. 31) is granted. This
17 action is temporarily stayed until resolution of the certified question in Nev. S. Ct. Case
18 No. 72931. The stay will be lifted upon such resolution. The parties must file a status
19 report within five days from such resolution. All pending motions (ECF Nos. 28, 39) are
20 denied without prejudice and may be refiled within thirty days from the Nevada Supreme
21 Court's decision on the certified question.

22 DATED THIS 22nd day of December 2017.

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26 MIRANDA M. DU
27 UNITED STATES DISTRICT JUDGE
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